

Bulletin 87

SURPLUS LINES CARRIERS AND MEDICAL MALPRACTICE INSURANCE

October 24, 1997

The Department now reminds all surplus lines carriers and agents operating in Indiana that Indiana Code s 27-1-15.5-5(c) requires that a surplus lines agent be unable to procure the type of insurance desired from an authorized insurer before placing the business with a surplus lines carrier. The requirement that the agent be "unable to procure" the desired type of insurance is interpreted by the Department to mean a true inability to procure. In the context of medical malpractice insurance, the Department interprets this statute to require that a surplus lines agent affirmatively demonstrate that the agent has gone to authorized insurers which customarily write medical malpractice insurance in Indiana and that the insured was rejected before a surplus lines carrier may be used. An insured's inability to obtain, from an authorized medical malpractice insurer, certain terms, unusual or special coverages or other options not specifically required by the Medical Malpractice Act does not demonstrate an inability to procure under I.C. s 27-1-15.5-5(c).

All surplus lines agents currently offering insureds medical malpractice insurance through a surplus line must be able to affirmatively demonstrate to the Department at the date of the insured's next renewal that they were, in accordance with the above interpretation, unable to procure this coverage from an authorized insurer. Agents unable to make such an affirmative demonstration must place said risks with admitted carriers only.

Sally McCarty
Insurance Commissioner